

1 **WAGANAKISING ODAWAK STATUTE #2023-__**
2 **GRANDPARENT AND GRANDCHILD VISITATION STATUTE**

3
4 **SECTION I. PURPOSE**

5
6 The purposes of this statute are to establish a cause of action for Grandparent and Grandchild
7 Visitation, and to set forth the criteria for granting a request for Grandparent and Grandchild
8 Visitation. This statute repeals and replaces Waganakising Odawak Statute 2021-015.

9
10 **SECTION II. DECLARATION OF VALUES AND GRANDCHILD’S RIGHTS**

11
12 **A.** Grandchildren are the Tribe's most vital and cherished resource. The Tribe's future
13 depends on the health and well-being of its grandchildren.

14
15 **B.** Grandchildren have a sacred right to receive the care and guidance necessary for their
16 spiritual, emotional, mental and physical development by preserving their interest in the culture,
17 history and traditions of the Tribe. Feeling pride from their identity as Odawak will help them
18 grow into adult Tribal Citizens who are strong, healthy and responsible.

19
20 **SECTION III. DEFINITIONS**

21
22 For the purposes of this statute only, the following words and phrases shall have the meanings
23 delineated below. The plural encompasses the singular, and the singular encompasses the plural
24 wherever appropriate.

25
26 **A.** “Grandchild” means a person who is less than eighteen (18) years of age, has not been
27 emancipated by a court of competent jurisdiction, and is either (1) a Tribal citizen or (2) eligible
28 for citizenship in the Tribe under Article V, Subsection A of the LTBB Constitution.

29
30 **B.** “Grandparent” means the parent of the grandchild’s father or mother, who is a Tribal
31 citizen.

32
33 **C.** “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all
34 land that is held in trust by the United States government for the benefit of the Tribe.

1 **D.** “Tribal Citizen” means a person who is an enrolled member of the Little Traverse Bay
2 Bands of Odawa Indians.

3
4 **E.** “Tribal Court” means the Tribal Court of the Little Traverse Bay Bands of Odawa
5 Indians.

6
7 **F.** “Tribe” or “LTBB” means the Little Traverse Bay Bands of Odawa Indians.
8

9 **SECTION IV. JURISDICTION**

10
11 **A.** Tribal Court shall have jurisdiction if:

12
13 1. The action involves a grandchild who resides within the Tribe’s territorial
14 jurisdiction and the petition is filed by a grandparent who resides within the Tribe’s territorial
15 jurisdiction, requesting a court order for Grandparent and Grandchild Visitation within the
16 Tribe’s territorial jurisdiction; or

17
18 2. A petition for Grandparent and Grandchild Visitation is filed by a grandparent,
19 and the grandchild’s parent(s), guardian(s), or custodian(s) consent to the Tribal Court’s
20 jurisdiction.
21

22 **B.** Jurisdiction once exercised by the Court is continuing and exclusive unless terminated by
23 the Court. Full faith and credit shall apply to the Court’s order for Grandparent and Grandchild
24 Visitation.
25

26 **SECTION V. CAUSE OF ACTION**

27
28 **A.** A cause of action is created when a grandparent seeks Grandparent and Grandchild
29 Visitation involving a grandchild under one or more of the following circumstances:

30
31 1. An action for divorce, separate maintenance, or annulment involving the
32 grandchild’s parents is pending before the court.
33

34 2. The grandchild’s parents are divorced, separated under a judgment of separate
35 maintenance, or have had their marriage annulled.
36

1 **3.** The grandchild’s parent who is a grandchild of the grandparents is deceased.

2
3 **4.** The grandchild’s parents have never been married, they are not residing in the
4 same household, and paternity has been established by the completion of an
5 acknowledgment of parentage, or by a determination by a court of competent
6 jurisdiction that the individual is the father of the grandchild.

7
8 **5.** The legal custody of the grandchild has been given to a person other than the
9 grandchild’s parent, or the grandchild is placed outside of and does not reside in the
10 home of a parent, with the exception of a placement of a grandchild for adoption that
11 terminates the right of a grandparent to commence an action for Grandparent and
12 Grandchild Visitation.

13
14 **B.** A court shall not permit a parent of a father who has never been married to the
15 grandchild’s mother to seek an order for Grandparent and Grandchild Visitation, unless the
16 father has completed an acknowledgment of parentage, or the father has been determined to be
17 the father by a court of competent jurisdiction.

18
19 **C.** The court shall not permit the parent of a putative father to seek an order for
20 Grandparent and Grandchild Visitation unless the putative father has provided substantial and
21 regular support or care in accordance with the putative father’s ability to provide the support or
22 care.

23
24 **D.** Adoption of a grandchild by a stepparent, does not terminate the right of the parent of a
25 deceased parent of the grandchild to commence an action for Grandparent and Grandchild
26 Visitation with that grandchild.

27
28 **SECTION VI. FILING OF PETITION**

29
30 **A.** A grandparent seeking a Grandparent and Grandchild Visitation order shall commence
31 an action for Grandparent and Grandchild Visitation by filing a petition with Tribal Court.

32
33 **B.** The petition for Grandparent and Grandchild Visitation shall be accompanied by an
34 affidavit setting forth facts supporting the requested order.

35
36 **C.** The grandparent shall give notice of the filing to each person who has legal custody of

1 the grandchild.
2

3 **D.** A party having legal custody may file an opposing affidavit.
4

5 **E.** By the Court on its own motion, the Court may utilize alternative dispute resolution or
6 Peacekeeping, or may hold a hearing. At the hearing, parties submitting affidavits shall be
7 allowed an opportunity to be heard.
8

9 **F.** The grandparent must show that the grandparent has established custodial environment
10 for the grandchild.
11

12 **G.** In order to give deference to the decisions of fit parents, it is presumed that a fit parent's
13 decision to deny Grandparent and Grandchild Visitation does not create a substantial risk of
14 harm to the grandchild's spiritual, emotional, mental and physical health, and preserves interest
15 in the culture, history and traditions of the Tribe. To rebut the presumption, a grandparent filing
16 a petition must prove by a preponderance of the evidence that the parent's decision to deny
17 Grandparent and Grandchild Visitation creates a substantial risk of harm to the grandchild's
18 spiritual, emotional, mental and physical health and preserves interest in the culture, history and
19 traditions of the Tribe. If the grandparent does not overcome the presumption, the court shall
20 dismiss the petition.
21

22 **H.** If both fit parents sign an affidavit stating that they oppose an order for grandparenting
23 time, the court shall dismiss the petition seeking an order for Grandparent and Grandchild
24 Visitation. This does not apply if one of the fit parents is a stepparent who adopted a grandchild
25 and the grandparent seeking the order is the natural or adoptive parent of a parent of the
26 grandchild who is deceased.
27

28 **I.** If the court finds that a grandparent has met the standard for rebutting the presumption
29 of preponderance of the evidence, the court shall consider whether it is in the best interests of
30 the grandchild to enter an order for Grandparent and Grandchild Visitation. If the court finds by
31 a preponderance of the evidence that it is in the best interests of the grandchild to enter a
32 Grandparent and Grandchild Visitation order, the court shall enter an order providing for
33 reasonable grandparenting time of the grandchild by the grandparent by general or specific
34 terms and conditions, including supervised or unsupervised visitation.
35

36 **J.** In determining the best interests of the grandchild, the court shall consider all of the

1 following:
2

- 3 **1.** The love, affection and other emotional ties existing between the grandparent and
4 the grandchild.
5
- 6 **2.** The length and quality of the prior relationship between the grandchild and the
7 grandparent, the role performed by the grandparent, and the existing emotional ties of
8 the grandchild to the grandparent.
9
- 10 **3.** The grandparent’s moral fitness.
11
- 12 **4.** The grandparent’s mental and physical health.
13
- 14 **5.** The grandchild’s reasonable preference, if the court considers the grandchild to
15 be of sufficient age to express a preference.
16
- 17 **6.** The effect on the grandchild of hostility between the grandparent and the parent
18 of the grandchild.
19
- 20 **7.** The willingness of the grandparent, except in the case of abuse or neglect, to
21 encourage a close relationship between the grandchild and the parent or parents of the
22 grandchild.
23
- 24 **8.** Any history of physical, emotional, or sexual abuse or neglect of any grandchild
25 by the grandparent.
26
- 27 **9.** Whether the parent’s decision to deny, or lack of an offer of, grandparenting time
28 is related to the grandchild’s well-being or is for some other unrelated reason.
29
- 30 **10.** To preserve the opportunity for the grandchild to learn about their culture and
31 heritage, and to become productive adult members of the Tribe, by experiencing their
32 culture on an ongoing basis.
33
- 34 **11.** Any other factor relevant to the physical and psychological well-being of the
35 grandchild.
36

1 **SECTION VII. PROHIBITIONS**

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3 **A.** A grandparent may not file a petition more than once every two years in this court or any
4 court of competent jurisdiction, unless the grandparent can show good cause. If the court finds
5 there is good cause to allow a grandparent to file more than one petition in a two-year period,
6 the court shall allow the filing and shall consider the petition; otherwise the court shall
7 automatically dismiss the petition.

8
9 **B.** A Grandparent and Grandchild Visitation order does not create parental rights in the
10 individual or individuals to whom Grandparent and Grandchild Visitation are granted. The entry
11 of a Grandparent and Grandchild Visitation order does not prevent a court of competent
12 jurisdiction from acting upon the custody of the grandchild, the parental rights of the grandchild,
13 or the adoption of the grandchild.

14
15 **SECTION VIII. MODIFICATION OR TERMINATION**

16
17 **A.** A court shall not modify or terminate a Grandparent and Grandchild Visitation order
18 unless it finds by a preponderance of the evidence, on the basis of facts that have arisen since
19 entry of the Grandparent and Grandchild Visitation order or were unknown to the court at the
20 time it entered that order, that a change has occurred in the circumstances of the grandchild or
21 his or her custodian and that a modification or termination of the existing order is necessary to
22 avoid creating a substantial risk of harm to the grandchild’s spiritual, emotional, mental and
23 physical health and preserves interest in the culture, history and traditions of the Tribe.

24
25 **B.** The court modifying or terminating a Grandparent and Grandchild Visitation order shall
26 include specific findings of fact in its order in support of its decision.

27
28 **SECTION IX. COURT RECORD**

29
30 The Court shall make a record of its analysis and findings including the reasons for granting or
31 denying a Grandparent and Grandchild Visitation petition.

32
33 **SECTION X. SEVERABILITY**

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35 If any section, subsection, paragraph, sentence, phrase or portion of this statute is, for any reason,
36 held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be

1 deemed a separate, distinct and independent provision and such holding shall not affect the validity
2 of the remaining portions thereof.

3

4 **SECTION XI. EFFECTIVE DATE**

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6 Effective upon signature of the Executive or thirty (30) days from Tribal Council approval
7 whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council
8 override of the veto.

9

10

11 **CERTIFICATION**

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